

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**C.C., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Mid West City, OK, Employer**

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**Docket No. 07-912  
Issued: August 9, 2007**

*Appearances:*

*James R. Linehan, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 19, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award decisions dated February 6 and December 28, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award.

**ISSUE**

The issue is whether appellant has more than a 10 percent permanent impairment to her right leg.

**FACTUAL HISTORY**

Appellant, a 35-year-old letter carrier, injured her right ankle and knee when she stepped in a hole on March 3, 1995. She filed a claim for benefits on March 14, 1995, which the Office accepted for right ankle and knee strain. Appellant underwent right knee arthroscopy on June 10, 1996.

On July 13, 2001 appellant filed a Form CA-7 claim for a schedule award based on loss of use of her right lower extremity. On December 26, 2001 the Office granted appellant a schedule award for a two percent permanent impairment of the right lower extremity for the period September 27 to November 6, 2001, for a total of 5.76 weeks of compensation.

In a report dated November 16, 2004, Dr. John W. Ellis, a Board-certified family practitioner, found that appellant had an 18 percent impairment of the right lower extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (A.M.A., *Guides*). He subtracted the 2 percent already awarded for a total of 16 percent right lower extremity impairment. Dr. Ellis stated:

“Examination of the right knee reveals decreased range of motion. [Appellant] only has flexion of 105 degrees, extension is equal to 0 degrees. Severe crepitation, popping and grinding is noted throughout the range of motion exam[ination]. There is laxity of the lateral collateral ligament.”

Dr. Ellis found: a 10 percent impairment due to abnormal range of motion pursuant to Tables 17-10 and 17-2 through 17-23 at pages 537 and 540; a 2 percent impairment due to a partial medial meniscectomy at Table 17-33 at pages 546 and 547; and a 7 percent impairment due to mild laxity of the lateral collateral ligament Table 17-33 at pages 546 and 547.

On February 11, 2005 appellant filed a Form CA-7 claim for an additional schedule award.

In a report dated November 3, 2005, an Office medical adviser reviewed Dr. Ellis' findings and the applicable figures and tables of the A.M.A., *Guides*. The Office medical adviser determined that appellant had a 10 percent permanent impairment of the right lower extremity, less the 2 percent already awarded, for a total of 8 percent impairment. He arrived at this finding by relying on Table 17-10, page 537, where he rated a mild impairment translated to a 10 percent impairment. The Office medical adviser ruled out a diagnosis-based impairment for the meniscectomy and ligament laxity in addition to the range of motion deficit according to Table 17-2, page 526, which prohibits combining such impairments with loss of range of motion.

On February 6, 2006 the Office granted appellant a schedule award for an additional eight percent impairment rating for the right lower extremity for the period November 16, 2004 to March 19, 2006, for a total of 72 weeks of compensation.

By letter dated November 10, 2006, appellant's attorney requested reconsideration.

By decision dated December 28, 2006, the Office denied modification of the February 6, 2006 schedule award decision.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> sets forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.<sup>2</sup> However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.<sup>3</sup>

### **ANALYSIS**

The Office medical adviser reviewed the evidence of record and determined that appellant had a 10 percent permanent impairment of the right lower extremity. He adopted the findings of Dr. Ellis regarding decreased range of knee motion. The finding of a 10 percent impairment of the right lower extremity was calculated in accordance with Table 17-10, which measures knee impairments based on loss of flexion.<sup>4</sup> Appellant's flexion of 105 degrees represents a 10 percent impairment pursuant to Table 17-10. The Office medical adviser rejected any additional impairment based on the partial medial meniscectomy and mild laxity of the lateral collateral ligament under Table 17.33, which provides impairment estimates on the basis of diagnosed conditions. This determination was proper, as an award based on loss of range of motion cannot be combined with a diagnosis-based estimate pursuant to Table 17-2 at page 526 of the A.M.A., *Guides*.

The Board finds that the Office's February 6, 2006 decision granting appellant an additional schedule award for an eight percent left lower extremity impairment was properly based on the available evidence of record and calculated in accordance with the applicable tables of the A.M.A., *Guides*. As there is no other medical evidence establishing that appellant sustained any additional permanent impairment, the Office properly found that appellant was not entitled to more than an additional eight percent impairment of the right lower extremity in its December 28, 2006 decision.

### **CONCLUSION**

The Board finds that appellant has no more than an eight percent additional impairment of the right lower extremity.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>2</sup> 5 U.S.C. § 8107(c)(19).

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> A.M.A., *Guides* 537.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 28 and February 6, 2006 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: August 9, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board